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SECURITY DEVICES

Joseph Dainow*

PRIVILEGES

Expenses of Last Illness

One of the issues in *Pelican State Associates, Inc. v. Winder*¹ was whether the privilege for expenses of last illness² attached to hospital charges for room and board, X-ray and laboratory services, drugs, dressings, oxygen, blood-typing, and transfusion charges. The trial court held there was a privilege, but this was reversed by the court of appeal.³ This denial of the privilege was grounded on the rule of *stricti juris* as applied to privileges and on the absence of hospital charges in the enumeration listed in Civil Code article 3202.⁴ The supreme court⁵ disagreed with this reasoning on the basis of (1) the text of article 3191(3), which establishes a privilege for "charges, of whatever nature, occasioned by the last sickness," (2) the judicial interpretation by a court of appeal that "article 3202 is not definitive but illustrative,"⁶ and (3) a number of other appellate decisions which recognized a privilege for hospital charges.⁷ The supreme court's decision on this point is correct and its soundness is confirmed by noting that the same conclusion was reached in France.⁸ It is important that the supreme court did settle and stabilize the law on this question, even though the final decision was against the plaintiff on an issue of liberative prescription which is discussed elsewhere in this symposium.⁹

Crop Pledge

*City Bank & Trust Co. v. Marksville Elevator Co.*¹⁰ involved

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1. 253 La. 697, 219 So.2d 500 (1969).

2. LA. CIV. CODE arts. 3191, 3199-3204.

3. 208 So.2d 355 (La. App. 1st Cir. 1968).

4. LA. CIV. CODE art. 3202: "The expenses of the last sickness comprehend the fees of physicians and surgeons, the wages of nurses, and the price due to the apothecary for medicines supplied by him to the deceased for his personal use during his last illness."

5. *Pelican State Associates, Inc. v. Winder*, 253 La. 697, 219 So.2d 500 (1969).

6. *Dinnat v. Succession of Lewis*, 8 La. App. 820 (1928).

7. See references cited in *Pelican State Associates, Inc. v. Winder*, 253 La. 697, 703 n.5, 219 So.2d 500, 503 n.5 (1969).

8. 2 PLANIOL, CIVIL LAW TREATISE, no. 2560 (La. St. L. Inst. transl. 1959); 2 COLIN & CAPITANT, COURS DE DROIT CIVIL FRANÇAIS, no. 1498 at 946 (10th ed. 1948).

9. *The Work of the Louisiana Appellate Courts for the 1968-1969 Term—Prescription*, 30 LA. LAW REV. 236 (1970).

10. 221 So.2d 853 (La. App. 3d Cir. 1969).

several issues incident to a recorded crop pledge. The sufficiency of the property description and the identification of the crop as produced thereon are factual issues for particularization in each case, and the personal liability of the third party purchaser is already well established,¹¹ as is also the utilization of the crop pledge to secure past debts as well as present and future debts. With reference to the identification of the specific crop with the advances made for its production, the court took a clear position on what may be a new point of law to the effect that the recorded crop pledgee "is not required to oversee that the money is actually used for such purpose, nor required to prove it was so used."¹² Another point made in this decision is that the "debt" secured by a recorded crop pledge includes the interest and the usually stipulated attorney's fees.

BUILDING CONTRACT PRIVILEGES

Pringle Associated Mortgage Corp. v. Eanes was a case in which the trial court was reversed by the court of appeal,¹³ this in turn was reversed on first hearing by the supreme court¹⁴ but affirmed on rehearing.¹⁵ The question was whether legal subrogation operated in favor of a subcontractor who had paid his laborers, so as to let him claim a laborer's privilege against the property. The issue of subrogation is very thoroughly and well discussed in the court of appeal opinion and in the supreme court affirmance on rehearing with the conclusion that there is no such subrogation. From the point of view of the building contract law, this conclusion fits in with the policy objectives of the statute which necessarily exclude the idea of such subrogation. An obstacle in the path of the conclusion reached was the prior supreme court decision to the contrary in *Tilly v. Bauman*,¹⁶ but when carefully reexamined, the supreme court put it aside as "unsound."

In *Courshon v. Mauroner-Craddock, Inc.*,¹⁷ the First Circuit Court of Appeal sitting *en banc* had to decide *inter alia* the scope of advances which could be secured by the mortgage which

11. See references cited *id.* at 855.

12. *Id.* at 858.

13. 208 So.2d 346 (La. App. 1st Cir. 1968).

14. *Pringle Associated Mortgage Corp. v. Eanes*, 226 So.2d 502 (La. 1969).

15. *Id.* at 513.

16. 174 La. 71, 139 So. 762 (1932).

17. 219 So.2d 258 (La. App. 1st Cir. 1968); *cert. denied*, 219 So.2d 778 (La. 1969).

primed suppliers' privileges under the private building contract law. It was contended that the priority given to this mortgage was limited to the security of advances for direct use in the construction project. Since the case came under the factual situation (construction contract not recorded) governed by R.S. 9:4812, and since the statutory text provided the priority for "a bona fide mortgage . . . duly recorded before the labor or work is begun or any material is furnished," the court properly concluded that there was no basis to qualify or limit the mortgage or the purpose of the advances as long as the mortgage is bona fide and previously recorded.

In this rehearing, the court retracted all views and conclusions expressed in the judgment on first hearing¹⁸ with reference to the interpretation of R.S. 9:4801, which governs the fact situation where a building contract and bond have been duly recorded. The textual provision of R.S. 9:4801 (C)¹⁹ is more specific about the nature of the advances included in the security of the priority mortgage. In view of the substantial difference of language in these two sections of the same statute, it can hardly be said that there is exactly the same legislative intent in the divergent provisions.

MORTGAGES

For some time there was uncertainty about the effective date of a collateral mortgage as against third persons. A strong contention existed that it was effective for ranking purposes as of the date of recordation regardless of the subsequent dates of which advances were actually made or the mortgage reissued. The question was set to rest by the decision in *Odom v. Cherokee Homes, Inc.*:²⁰

18. See *Courshon v. Mauroner-Craddock, Inc.*, 219 So.2d 254 (La. App. 1st Cir. 1968).

19. LA. R.S. 9:4801(C) (1950): "When a mortgage note has been executed by the owner of the immovable for the purpose of securing advances to be made either simultaneously therewith or in the future, whether such advances be for the payment of all or part of the purchase price of the property, for commitment fees or any other type of expenses incurred or to be incurred in connection with construction on the property, and the mortgage has been recorded and the note delivered to the lender before any work or labor has begun or material has been furnished, or before the recordation of a building contract, the amount of the advances made simultaneously therewith or thereafter shall be deemed secured by the mortgage in precedence to and with priority over any of the claims had under the privileges conferred by Sub-section (A) of this section, except as stated in Sub-section (D) hereof."

20. 165 So.2d 855, 865 (La. App. 4th Cir. 1964), *cert. denied*, 246 La. 868, 167 So.2d 667 (1964).

"[T]he lien of a collateral mortgage dates from the date of issuance or reissuance of the note identified with it and not from the date of recordation of the mortgage. The lien is regarded as being suspended insofar as third persons are concerned during any period in which the note remains unissued in the possession of the mortgagor or during any period between the extinguishment of a debt which the note is pledged to secure, and its repledge as security for another debt. The lien of the mortgage revives upon the repledge of the note and dates from that day."

From this it follows that the first recorded collateral mortgage will outrank a later recorded collateral mortgage only to the extent that an actual indebtedness exists under the former prior to the actual indebtedness under the latter. This point is not clearly treated in the recent case of *Wallace v. Fidelity Nat'l Bank*,²¹ in which the court's opinion focuses primarily on the validity of the pledges of the respective mortgage notes, giving priority according to the relative dates of perfection of the pledges. In the actual facts of the *Wallace* case, the result is not inconsistent with the *Odom* rule, but it would be regrettable if the analysis and language of the *Wallace* case created any new uncertainty in connection with the effective date for ranking purposes of the collateral mortgage. It is to be noted that in refusing a writ, the supreme court added, "The result is correct."²²

CHattel MORTGAGES

*Ideal Loan of New Orleans, Inc. v. Johnson*²³ involved the adequacy of a chattel mortgage description which is essential for its validity. The majority of the court distinguished between the degree of description required for the effectiveness of the chattel mortgage against third persons and that which suffices between the parties. For the latter, the court's statement that "only a general description of the chattels is necessary"²⁴ is supported only by a reference to *American Jurisprudence*, which is likewise the sole authority given for the proposition "all descriptions must be construed in view of the general principle that it is pre-

21. 219 So.2d 342 (La. App. 1st Cir. 1969).

22. *Wallace v. Fidelity Nat'l Bank*, 253 La. 1083, 221 So.2d 517 (1969).

23. 218 So.2d 634 (La. App. 4th Cir. 1969).

24. *Id.* at 636.

sumed the mortgagor intended to confer some benefit on the mortgagee."

The Chattel Mortgage Act requires adequate description as an essential for the validity of this security device and makes no distinction whether as against third persons or as between the parties.²⁵ The statute also assimilates chattel mortgages to Civil Code immovable mortgages,²⁶ for which description is an essential requirement without distinction as to the immediate parties or third persons.²⁷

The meaning and purpose of the description requirement are to make possible the seizure in event of foreclosure and to identify the object seized as the identical object described in the mortgage.²⁸

The chattel mortgage in question enumerated a number of household items, concluding with the phrase "together with all other furniture, fixtures and contents located on the premises." As to this part of the description, the court properly ruled it insufficient, but the majority sustained mortgage validity as to the other items, such as "one bed . . . one dresser . . . one refrigerator, one washing machine." This gives the statute a liberality of interpretation which is undue and excessive; there is nothing in the document to identify the bed or the refrigerator as the actual things chattel-mortgaged because either of these items (or any of the others listed without description) could just as well be replacements for the original ones which might have been discarded. A list of things is an "enumeration," not a "description."

The one group of items for which there is anything in the nature of description was "one living room set consisting of: one green sofa, two matching chairs, one end table, one coffee table"; the dissenting judge's acceptance of the words "green" and "matching" as possibly satisfying the description requirement is more like a measure of generosity in a reluctant compromise than the strict application of the legal principles well stated in that opinion.

25. LA. R.S. 9:5352 (1950).

26. *Id.* 9:5363.

27. See *Ideal Loan of New Orleans, Inc. v. Johnson*, 218 So.2d 634, 636 (La. App. 4th Cir. 1969) (dissenting opinion).

28. LA. R.S. 9:5352 (1950): ". . . a full description of the property to be mortgaged shall be set forth so that it may be identified. . . ."

Finally, instead of referring to *American Jurisprudence*, it would have been more relevant to cite Civil Code article 3183, which provides:

"The property of the debtor is the common pledge of his creditors, and the proceeds of its sale must be distributed among them ratably, *unless* there exist among the creditors some lawful causes of preference." (Emphasis added.)

Accordingly, any preference given to any creditor, by reason of a privilege or mortgage of any kind, is an exception to the general rule of proration, and full compliance with all the respective requirements must be met for validity between the parties as well as for effectiveness against third persons.

In *First Nat'l Bank in Mansfield v. Lawrence*,²⁹ where the holder of a second chattel mortgage (on certain drilling rigs) had actual knowledge of the existence of a prior chattel mortgage on the same things, the court held that the holder of the first chattel mortgage was relieved of a literal compliance with the law concerning registry. A writ of review was granted,³⁰ but on motion of both mortgagees the writ was "recalled, dissolved and dismissed."³¹

It is regrettable that this question did not receive full consideration and decision by the supreme court. When the chattel mortgage law was overhauled and reenacted in 1944,³² the phrase "in order to affect third persons without notice" was changed to read "in order to affect third persons," omitting the last two words. This change, together with the provision which assimilates chattel mortgages to Civil Code immovable mortgages wherever appropriate,³³ must be taken to mean something like the application of the public records doctrine rather than to have no meaning at all. Yet there has been some jurisprudence looking in this latter direction³⁴ and it would have been well to have a full consideration of the matter by the supreme court.

29. 207 So.2d 907 (La. App. 2d Cir. 1968).

30. *First Nat'l Bank in Mansfield v. Lawrence*, 251 La. 1082, 208 So.2d 537 (1968).

31. *First Nat'l Bank in Mansfield v. Lawrence*, 253 La. 54, 216 So.2d 304 (1968).

32. La. Acts 1944, No. 172, now La. R.S. 9:5353 (1950).

33. La. R.S. 9:5363 (1950).

34. See cases cited in *First Nat'l Bank in Mansfield v. Lawrence*, 207 So.2d 907 (La. App. 2d Cir. 1968).